

TITLE 44
LABOR

CHAPTER 2
EMPLOYER DUTIES EMPLOYEE ASSISTANCE PROGRAMS

44-201. EMPLOYER DUTIES. (1) It is unlawful for any employer to maintain a blacklist, or to notify any other employer that any current or former employee has been blacklisted by such employer, for the purpose of preventing such employee from receiving employment.

(2) An employer who in good faith provides information about the job performance, professional conduct, or evaluation of a former or current employee to a prospective employer of that employee, at the request of the prospective employer of that employee, or at the request of the current or former employee, may not be held civilly liable for the disclosure or the consequences of providing the information.

There is a rebuttable presumption that an employer is acting in good faith when the employer provides information about the job performance, professional conduct, or evaluation of a former or current employee to a prospective employer of that employee, at the request of the prospective employer of that employee or at the request of the current or former employee.

The presumption of good faith is rebuttable only upon showing by clear and convincing evidence that the employer disclosed the information with actual malice or with deliberate intent to mislead.

For the purposes of this section, "actual malice" means knowledge that the information was false or given with reckless disregard of whether the information was false.

[44-201, added 1996, ch. 131, sec. 1, p. 454.]

44-202. EMPLOYEE ASSISTANCE PROGRAMS. (1) As used in this section:

(a) "Provider" means any professional licensed under the laws of this state whose communications with clients or patients are subject to any requirement of confidentiality or privilege pursuant to the laws, regulations, or rules of court of this state and who provides professional services to employee assistance program participants.

(b) "Participants" means employees eligible to participate in an employee assistance program and all others eligible to participate in an employee assistance program by virtue of their relationship to an employee.

(c) "Employee assistance program" means a program established by an employer for the benefit and convenience of its employees pursuant to which participants access the professional services of one (1) or more providers regardless of who is responsible for the payment of any fees charged for such services, and regardless of the type of employment or business relationship, if any, that the employer has with the providers involved.

(2) No provider shall disclose to an employer, and no employer shall be entitled to obtain disclosure of, a communication from a participant that is privileged from disclosure, or required to be kept confidential by a provider, under the laws, regulations or rules of court of this state. No employer shall be held liable in any degree on the basis of any communication between a participant and a provider unless the employer actually knew, or should have known, of the information communicated before the alleged

breach of duty or harm occurred. The nature of the employment or business relationship between the employer and the provider shall not be a consideration in determining whether an employer actually knew of the information communicated between a participant and a provider.

(3) No participant shall be required to waive the confidential or privileged nature of any communication as a condition of participating in an employee assistance program, but this subsection shall not apply to an employer's referral of an employee to a provider which is a condition of the employee's continued employment.

[44-202, added 1999, ch. 366, sec. 2, p. 967.]

CHAPTER 3
PRIVATE EMPLOYMENT AGENCIES -- [REPEALED]